THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.8148 OF 2006

DATED: 25TH AUGUST, 2006.

Between :

A. Ramapathi Rao … Petitioner

And

1. The Govt. of A.P., rep. by its Engineer-in-Chief, R & B, Erramanzil, Hyderabad, And another. .. Respondents

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ORDER :

The petitioner herein is granted a lease for collection of toll fee at Road bridge in Km. 114/6 near Elakaturthi on Rayapatnam – Warangal road of Karimnagar District for the period from 1-4-2004 to 31-3-2006. The petitioner states that he paid a sum of Rs.14,56,020/- towards stamp duty and registration charges of the lease deed. After the period of lease had expired, the petitioner raised a dispute as to his liability to pay the stamp duty and registration charges and made a claim for refund of Rs.14,56,020/- paid by him towards stamp duty and registration charges. Since the respondents rejected the said claim, this writ petition is filed seeking a declaration that the action of the respondents in collecting a sum of Rs.14,56,020/- towards stamp duty is arbitrary and illegal.

I have heard the learned Counsel for both the parties and perused the material on record.

A Division Bench of this Court in UPPALAPATI DURGA PRASAD v. EXECUTIVE ENGINEER (R & B), N.H. DIVISION, SRIKAKULAM AND OTHERS[1], having considered the scope of relevant provisions under the Indian Stamp Act, 1899 held that an instrument of letting out right to collect tolls is a lease for the purpose of the Stamp Act. However, so far as the rate of stamp duty is concerned, the Division Bench had left it to the respondents therein to fix the same in accordance with the Schedule of the Indian Stamp Act, 1899.

In the light of the ratio laid down by the Division Bench, there can be no dispute about the fact that the document in question shall be treated as a lease deed.

However, the respondents in the counter-affidavit contended that under Article 31 (b) of Scheudle-1A of Stamp Act, stamp duty is chargeable at the rate of 5%. The said claim of the respondents is disputed by the petitioners stating that the respondents are entitled to collect at the rate of 3% but not 5% as claimed by them.

It needs no reiteration that the stamp duty to be collected always depends on the nature of the document. The nature of the document and the stamp duty chargeable is required to be determined by the competent authority under the Indian Stamp Act and this Court while exercising the jurisdiction under Article 226 of the Constitution of India cannot record any finding on the same.

Accordingly, the Writ Petition is disposed of with a direction to the respondents to forward the document in question to the appropriate authority for adjudication as to the proper stamp duty payable. Such exercise shall be done within a period of four weeks from the date of receipt of this order. After the stamp duty is determined by the registering authority, the respondents shall consider the claim of the petitioner for return of the amount and pass appropriate orders in accordance with law.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 25-08-2006

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[1] 2001 (4) ALD 176